



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 12/12/00
AGENDA ITEM 7
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission's Approval of Administrative Use Permit No. 00-150-28 – Whalen & Company for Metricom (Applicant), PG&E (Owner) – Request to Attach a Telecommunication Antenna Facility to a PG&E Transmission Tower – The Property is Located Near 1620 Highland Boulevard, Northerly Side at the Point Just Before the Street Closure and Barricade Structure Accessed From Mission Boulevard in an A (Agricultural) District)

RECOMMENDATION:

It is recommended that the City Council uphold the Planning Commission's approval and deny the appeal, find that the project is exempt from environmental review and approve the project subject to the attached conditions of approval.

DISCUSSION:

The applicant (Metricom) proposes the installation of a telecommunication antenna facility to be attached to the top of a PG&E transmission tower near Highland Boulevard. The adjacent area along Highland Boulevard is developed with single-family homes. The overall height of the tower including the antenna is 79 feet 6 inches. Four sectors of panel antennas (for a total of eight antennas), each measuring 3 feet in height, are to be mounted at the corners of the tower. The antenna panels and support structures will be painted to match the tower.

In conjunction with the antenna array is the need for equipment storage on the property. A concrete pad (10 feet by 10 feet) will be placed under the center of the tower to mount 3 steel cabinets (approximately 4 feet high, 4 feet 10 inches long by 2 feet 8 inches wide) each that house the radio equipment and power supplies. The pre-manufactured equipment cabinets are self-contained and can be painted to lessen their presence. An 8-foot-high wood fence is proposed to enclose the cabinet area since PG&E will not allow a metal fence and staff believed that a more decorative concrete or masonry fence would be more likely a target for graffiti.

On October 10, 2000, a neighborhood informational meeting was held to provide an opportunity to review plans of the telecommunication facility, and to respond to questions about the project. In attendance at the meeting were the applicant and three company engineers and a City staff member. No interested neighbors or public attended the meeting.

At the Planning Commission hearing of October 19, 2000, one of the appellants opposed the project because he believes the proposed antenna and equipment shelters are unsightly and that such equipment is a health hazard, specifically for pacemakers. Another speaker at hearing questioned whether the antenna would cause interference to his television and other electronic reception. The Planning Commission indicated that Federal Law prohibited their review of the health aspects of these antennas and that, while they agreed that the transmission tower was not an attractive structure, they did not believe that the additional mounted antennas would contribute significantly to their unsightliness. The project was unanimously (7:0) approved by the Planning Commission.

The appellants in their appeal claim that (1) the proposed antennas and equipment shelters would be an eyesore; (2) that the structures would block their view of the bay and green belt; (3) that the structures would be an attractive nuisance that would encourage vandalism and graffiti; (4) that the facility will cause additional traffic to the area; and (5) that the existing electromagnetic fields coupled with the microwaves emitting from the antennas would increase the risk of fire.

The following responses are given to the above claims by the appellant:

- (1) Proposed Facility Creates an Eyesore – The antennas are small (1' x 3') and would be painted the same color as the tower. Both the Planning Commission and staff believe that the visual impact of antennas on the tower would be considered negligible. The appellant also cites that the required signage on the equipment cabinets will be an eyesore. The required signage is a decal placed on the cabinet that gives a toll-free phone number required by the ordinance. It is so small that it could not be seen from the public right-of-way.
- (2) Proposed Facility will Block Views – The antennas on top of the **tower** will be approximately 71'-6" to 79' - 6" feet above grade and are high above any vista to the bay or the lower flatlands of Hayward. Likewise, the small equipment cabinets located under the tower and surrounding security fence are lower in height than the single-family dwellings and trees beyond and to the west of the **tower**. Therefore, the proposed facility will not block the neighbor's view to the bay. It is recognized that the cabinets proposed under the tower will partially block the vista into the lower canyon, but the PG&E corridor runs at an angle to the street, and the majority of the wide site is still open and will be unobstructed.
- (3) Proposed Facility will Create a Nuisance and Crime – Police Department records (last two years only) do not indicate any calls for service regarding vandalism in the area. A report filed on 9/03/00 with the Police indicates that youths were banging on the street barrier causing a disturbance in the area approximately at 9:30 p.m. Staff has not seen evidence of any graffiti problem in the area. While any structure proposed on open land could present itself to be a problem, the conditions of approval cover the requirement for immediate removal of graffiti.
- (4) Proposed Facility will Increase Traffic – The facility is to be unstaffed and internal equipment will be electronically monitored. A service call occurs approximately once per

month where minor adjustments and repairs can be made. This is a standard procedure with most telecommunications facilities. Any service calls would visit the site from Mission Boulevard and would not pass the appellant's residence.

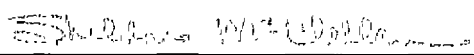
- (5) Proposed Facility with Microwaves Emitting from the Antennas Coupled with Existing Electromagnetic Fields will Increase the Risk of Fire – The Fire Department indicates that the City has never had a **fire** from any high tension wire line on the PG&E corridor. Furthermore, there is no record that low frequency radio waves cause fires.

In regards to television/radio interference, Metricom's mobile data networking and technology system is an extremely low-power facility, employing only a small fraction of the power used by television and radio broadcasters. Metricom is licensed by the FCC to operate specifically within the 902-928 Megahertz frequency band thereby eliminating any potential interference with radio or television transmission reception in the area.

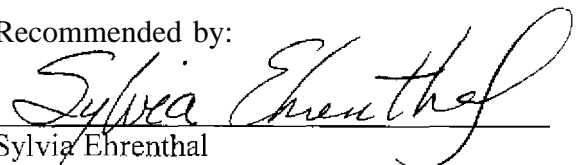
The Metricom facility meets all state and federal regulations for emission of non-ionized radiation emissions. All antenna facilities (including radio and television broadcasting, microwave and cellular communications, ham radios, police radar) emit a small amount of non-ionizing radio frequency radiation ("RFR"). This form of microwave energy is low in power and cannot ionize, or alter, the molecular structure of living tissue. The federal government (FCC) has legislated that they will be solely responsible for the health aspect of all licenses that they issue and that state or local governments cannot deny a permit based on health issues. The only review powers that have been given to local government is their review of the placement, design, and construction of these facilities.

Both the Planning Commission and staff recommend approval of the administrative use permit to allow the telecommunications facility and believe it to be consistent with the adopted Antenna and Telecommunications Facilities Ordinance. The project is exempt from environmental review under California Environmental Quality Act ("CEQA") as new construction of small structures or in-fill development. Moreover, the proposed antenna being co-located on an existing tower provides a beneficial **service to** the community without the need to erect a separate tower or support structure.


Prepared by:


Sheldon McClellan
Senior Planner

Recommended by:

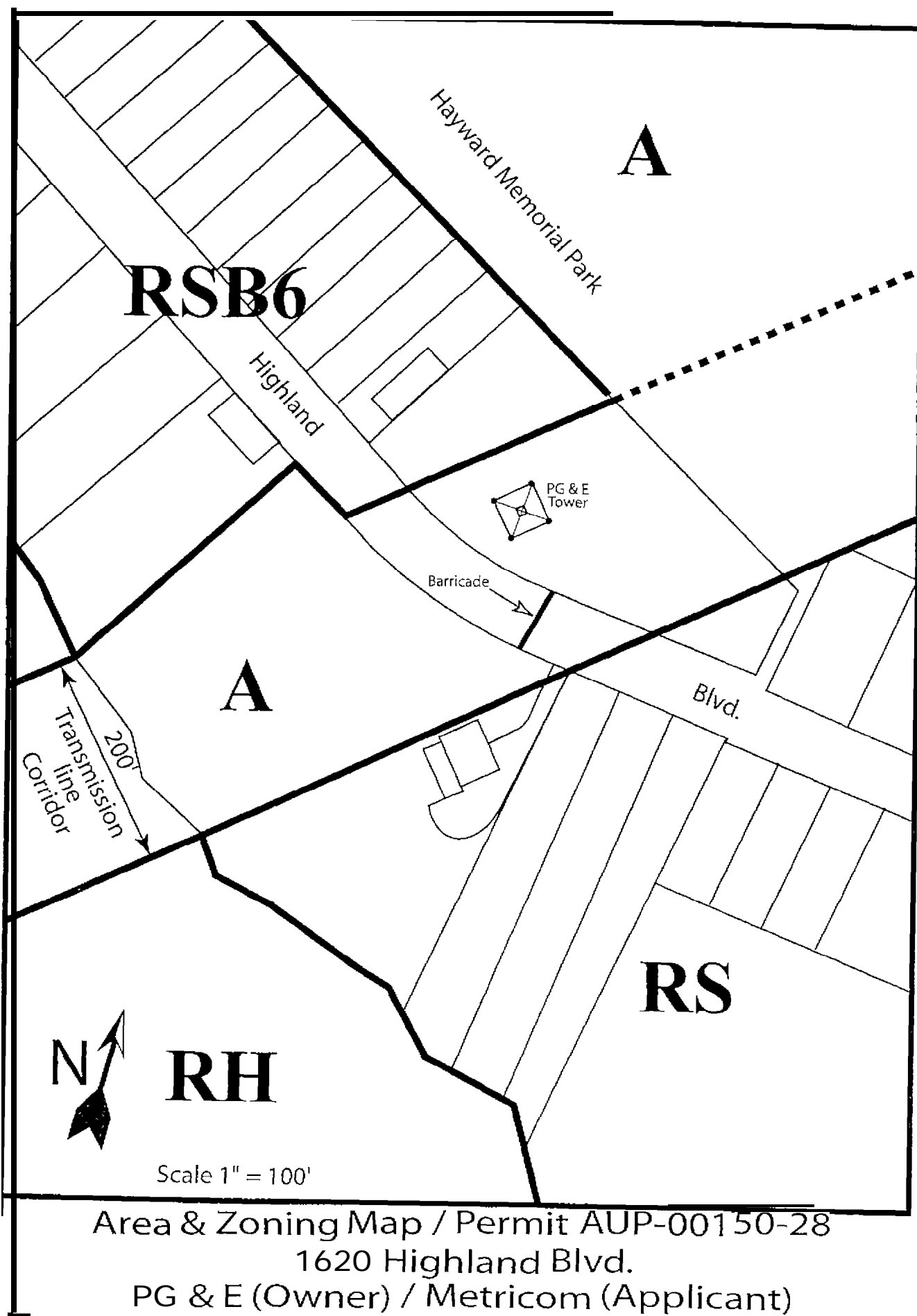

Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:


Jesús Armas, City Manager

Attachments: Exhibit A Area Map
 Exhibit B Letter of Appeal dated October 26, 2000
 Exhibit C Planning Commission Meeting Minutes and Staff Report dated
 October 19, 3000
 Draft Resolution

12 5 00



00725 00 14:50 CLK

10/26/00

Lubna & Ikram Jahangiri
 163-1 Highland Blvd
 Hayward, CA 94542
 510-543-6995
 510-543-6595

cc: Mayor, City Council,
 City Manager and
 Dept. City Attorney
 & Planning Manager
 Fwd: 10/27/00 ml

Ref: Administrative Use Permit No. 00-150-28
 City Planning Commission review
 Agenda Report submitted to the City of Hayward, Planning Commission
 Meeting Date: 10/19/00
 Agenda Item 2

Honorable Mayor and City Council of Hayward:

We the undersigned, Lubna and Ikram Jahangiri, residents of 1624 Highland Blvd., Hayward, the property near the Metricom telecommunication antenna site, do hereby appeal the decision of the City Planning Commission taken on October 19th 2000 at City Hall allowing Metricom to complete the installation of their transmission antenna.

The grounds for appeal are as follows.

I. Substantive unfairness:

- a. THE REPORT MAKES NO MENTION OF THE FOLLOWING POINTS AND THE Planning Commission failed to address the following PLACEMENT concerns raised by the residents present in the hearing and via the mail/email:
 - i. Eyesore causing irreparable harm to the property values:
 1. Eight-foot high covering 10x10 feet enclosure for the antenna will be a permanent eyesore obstructing the view of the bay/Hayward green belt, and negatively impacting our property values.
 2. Three cabinets, painted gray, installation at base of tower will be additional eyesores, obstructing the view of the bay and the Hayward green belt and negatively impacting our property values.
 3. Kludge of antenna at top of the tower will be an additional eyesore, further obstructing the view of the bay and the Hayward green belt and negatively impacting our property values.
 4. Attachment of signs to the enclosure identifying the property will be an additional eyesore and negatively impacting our property values.
 - 3 This myriad of the antenna and its supporting structures (the cabinets, the enclosure, signs etc) directly impact main view of the nearby houses, including ours, and add to the already existing High Voltage transmission grid, PG&E street lines, telephone lines.
 - ii. Crime attraction:
 1. The steel cabinets will be an easy target of vandalism and a great place for other illicit activity. Historically, the only other such structure in the area, the barrier on the adjoining road, has consistently been vandalized. We have personally reported to the police, one such vandalism in progress that we caught on video. This resulted in arrests.
 2. The area, because of its scenic view, is an existing hub of teenage drug, alcohol, smoking, speeding and theft (petty and grand) activity. The presence of yet another structure will only add and encourage such activity.
 3. Because of the high crime area, the risk of graffiti on the surface of the new construction is phenomenal. The City admits the proposed development to be a likely graffiti target.

- 4 The installation of the antenna imposes an undue and unwarranted burden on the residents to:
 - a. Report crime including:
 - i. Climbing
 - ii. Vandalism
 - iii. Graffiti
 - iv Injury
 - v. Unauthorized access

III. Nuisance:

1. The teenagers already congregate in this area and throw rocks at existing street signs and electric towers. The steel cabinets will be perfect targets for such nuisance activity
2. Amount of traffic and the noise produced by the "monthly" maintenance of the antenna will add to the existing PG&E maintenance activities, create nuisance, and disturb the peace and quiet of the neighborhood (*every month*)

iv. Environmental hazard.

1. The enclosed area will gradually deteriorate into a major collecting spot for debris and trash. High wind and lack of City services will aggravate this situation.
2. Electromagnetic fields coupled with the microwaves emitting from the antenna will increase the risk of fire.
3. Health effect of microwaves in combination with electromagnetic radiation is UNKNOWN and was not addressed.

v. Bias of the Report and the Planning Commission.

1. The Planning Commission exclusively focused on the health area in which according to them, they lacked information and jurisdiction. They deliberately ignored the issues of Placement, which were the sole purpose of the hearing and are very much under their jurisdiction.
2. Photographs in the report show the electric tower out of context of the neighborhood or the view, making it an easy sell to the viewers.
3. The Planning Commission was shown a video tape recording of the tower and surrounding myriad of wires of the Power grid lines, street power and telephone lines and how they affect the view and neighborhood. Interestingly they appreciated and agreed to the amount and intensity of the existing problem.
4. The comments of one the members speak for themselves when he ridiculed and downplayed the concerns of the neighbors by saying something to the effect:
 - a. It can't get uglier than it already is (admitting that environment is already cluttered)
 - b. The extra-wattage of the microwave antenna in addition to existing power lines is like a "fly on an elephant" We disagree with this analogy. This is out of context remark that fails to objectively address the actual magnitude of the problem
 - c. The Planning Commission is expected to represent the residents of Hayward and not out-of-town corporations. In making these comments he exhibited his bias against the people he is representing. For us even a "little" is too much. The volume and size of the "fly" are too much for the residents
5. Another council member remarked that she herself uses cell phones and drives on the freeways thus adding to the pollution like everybody else. She, thus, effectively argued "for pollution" and made no attempt to

- argue how to "prevent" pollution. In this case it is the radiation pollution. Her comment is clearly biased in favor of Metricom.
6. The report fails to include as an exhibit the letter written by us to protest this installation (they selectively included only one other letter)
 7. The before hand notices to neighborhood only mentioned antenna. There was no reference to the extensive construction on ground and accompanying signage. If included, this would have produced an outcry from the neighbors.
 8. The language of the report down plays and tries to gloss-over the environmental impact by referring to the development as "small" addition that brings into question the neutrality of the report.
 9. In effect we felt during the hearings that we were swimming upstream in a mock setup where decisions had already been made and nothing we said was to be taken seriously. This reflected incompetence, insensitivity or vested interest of the council.

THE ONLY ISSUE CONSIDERED BY THE COMMISSION WAS THE EFFECT OF RADIATION ON HEALTH and that too was deferred to the federal government without any evidence whatsoever from the applicant.

- i. Metricom admitted lack of any study for them to quote regarding risks of health. Instead the council advised the appellant (Ikram), to do research in this area. The burden of showing no risk to health should be on Metricom and not on by-standing neighborhood residents.
- ii. Even if the FCC regulates the health impact, the City still has power to make decision over planning, design and construction, and *this is very much a planning, design and construction issue*

3. Procedural unfairness:

- a. Infrastructure for the antenna has already been installed on the electric tower couple of months before the hearing, underscoring the charade of public hearings. Does it imply.
 - i. Gradually acclimatizing the public to this eyesore before final installation.
 - ii. Decision was already made in favor of this corporation.
 - b. In our case the applicant (Metricom) was called to testify *after* the neighbors, which was in contradiction to the Planning Commission's own accepted usual practice, which is, to hear the applicant first and then the public. This is evidenced by the comments of the Chair in the case before this one where he reminded the council of the usual practice of hearing the applicant before the public gets a chance for comments. In hindsight, this looks like a setup
3. This is an issue affecting the quality of life for Hayward residents. For comparison, please look into neighboring cities in South and West Bay where they don't even allow streetlights.
 4. The denial of this permit will not disproportionately burden Metricom (they can find other sites). The City staff in their report to the Planning Commission verbally said that similar installations before were done only in commercial areas of the City. This is the first such residential installation. To the contrary, the residents are captives of their properties and will suffer irreparable harm to their property values, use and enjoyment of their properties, pursuit of happiness and quality of life. Most residents within the community are retired people or couples with very young children. For whom abandoning their properties is not possible
 5. The "equity" of this case is that the Planning Commission which is to represent the citizens of Hayward, favored an out of town corporation in the face of strong opposition by the neighborhood residents who were only trying to protect their interest in their properties and standards of living and quality of life.

6. In the light of the above, we as citizens, demand that enquiry should be made into any procedural and regulatory mishandling by the Planning Commission.
7. Note: At the end of the hearing the Chair announced that the period for appeal was 10 days. As of the time of filing this appeal, the minutes of the hearing under appeal were not available from the City Planning Division, and are not expected to be available for at least two weeks to a month.


Sincerely,



Ikram Jahangiri

10/26/00

Date



Lubna Jahangiri

10/26/00

Date

setbacks consistent in a neighborhood.

Commissioner Halliday said this was a very tough decision, which was not done lightly. She noted that she is hoping that during the General Plan process, the City Council and Commission members will be able to develop guidelines for older neighborhoods. In this instance, she said, she did not want to set a precedent. Common sense says you have to get permits for a structure this size, especially when you cut into a slope.

Commissioner Zermeno wondered who would be liable if there were a slide and damage and it was found the shed was at fault.

Assistant City Attorney Connely said liability would be addressed in an executive session.

Commissioner Zermeno then suggested that the reason Homeowners Associations have CC&R's, is for consistency in the neighborhood.

Planning Manager Anderly added that generally, to be able to construct a building of this size and complexity, one would know a building permit is required.

Chairperson Caveglia said you have to assume people who know how to build something this size would also know to ask.

Commissioner Zermeno stressed that liability is an issue with this structure and its location.

Commissioner Williams said he was initially undecided about the issue but if the Commission supported the variance, the owner would still have to get a soils test. He expressed concern about cutting into the slope, and noted the reason this issue was brought to the attention of the City was as a result of a complaint. He added that we must abide by our ordinances. He would support the motion.

Commissioner Sacks said it was unfortunate that it got this far without the right parties being involved. She indicated support for the motion and quoted section d. of the Findings for Denial saying that this would constitute a special privilege to the applicant.

Commissioner Bogue said he, too, would support the motion. He said cutting into the slope is in violation of both the Homeowner's CC&R's as well as the City's Zoning Ordinances. He expressed concern that the building sits in the slope.

The motion for denial of the variance passed unanimously.

2. Administrative Use Permit No. 00-150-28 – Whalen & Company [Bonnie Medina-Jawad] for Metricom (Applicant), PG &E (Owner) : Request to Attach a



Telecommunication Antenna Facility to a PG&E Transmission Tower - The Property is Located at 1620 Highland Boulevard, Northerly Side at the Point Just Before the Street Closure and Barricade Structure Accessed from Mission Boulevard in an A (Agricultural) District

Senior Planner McClellan corrected the location of the property as noted in the report and described the proposal. He explained the recently adopted Telecommunications Ordinance. He said **quite** often a business would co-locate with a competitor. Metricom is a new player in the field. This application is more for wireless and networking. He showed photos of the existing transmission tower on the property as well as how the addition of the antenna would look. He agreed that these are not attractive structures but added that between the federal government regulations and local jurisdictions, the City may only review the visual effect and placement of the antennas. He indicated that there were no neighbors in attendance at a public neighborhood meeting on this project, although a neighbor had emailed the City to express concern regarding the health issues associated with the telecommunications device and the general appearance.

Commissioner Williams asked about studies pertaining to health issues and was told the Federal Government **has** studies that have determined there is no evidence these waves are harmful. He added that the carrier can provide further reports and information to neighbors if they ask for them.

The public hearing opened at 8:40 p m

Robert Bollinger, 1569 Highland, asked whether this antenna would interfere with his television and other electronic reception. He said he has complained about interference in the past and no one will accept responsibility. He then asked how the neighbors can know these things are safe. If PG&E is going to profit from this, perhaps they can be **encouraged** to maintain and clean up the area around the tower. He added that there is **a lot of activity** in the area that should be watched, particularly with no fencing around the tower. It has become an attractive place **for** teenagers to congregate.

Chairperson Caveglia asked staff to suggest that the police Include this **site** in their rounds of the City.

Ikram Jahangiri. 1624 Highland Boulevard, said he and his brother have the property immediately next to the tower. He said the neighborhood is full of houses. it is not just open space. He commented that any enclosure around the tower would fill up with debris. He also expressed concern regarding the health issue specifically for pacemakers. He then showed a video of **the** neighborhood and the view from their home. He said he was strongly opposed to the addition of the antenna.

Bonnie Medina-Jawad, Whalen & Co. 4281 Technology Drive, Fremont, applicant, introduced Dean Erickson of Hammett & Edison in Sonoma who was available for questions. Mr. Erickson described the wattage of the antennas and the radio wave exposure as a very miniscule percentage of the federal guidelines.

Ms. Medina-Jawad said she was unaware of any reports regarding health issues. She noted that Metricom would erect an equipment cabinet at the site, which will be monitored.

The public hearing closed at 8:58 p.m.

Chairperson Caveglia reminded members that it was not in the power of the Commission to make any decisions regarding the health of neighbors who choose to live next to transmission towers. He encouraged Mr. Jahangiri and his family to do some research into the studies that may be available.

Commissioner Fish said the 12,000 volts already up there might be the initial concern. It is an accumulative thing. He said the use of this high tower for a telecommunications antenna is ingenious. He moved, seconded by Commissioner Sacks, for approval of the permit.

Commissioner Halliday sympathized with Jahangiri family but said there is little the Commission can do at this point since we all use electronic equipment. She said she has also wondered about the accumulative impact of all these things.

The motion passed unanimously.

~~ADDITIONAL MATTERS~~

~~3. Oral Report on Planning and Zoning Matters~~

~~Planning Manager Anderly announced that there would be one hearing in November.~~

~~4. Commissioners Announcements, Referrals~~

~~Chairperson Caveglia made a presentation to Commissioner Fish for his many years of service to the City as both a Planning Commission& and a member of the Board of Zoning Adjustments.~~

~~Commissioner Fish thanked everyone for their support during his terms. He said the Commission serves a very important role in the City in determining the shape of the City. He said how they interpret the ordinances are very important to the look of the neighborhoods, He thanked members of the Council for the opportunity to serve,~~



CITY OF HAYWARD AGENDA REPORT

Planning Commission
Meeting Date 10/19/00
Agenda Item 2

TO: Planning Commission

FROM: Sheldon McClellan, Senior Planner

SUBJECT: Referral by **Planning** Director of Administrative Use Permit No. 00-150-28 – Whalen & Company [Bonnie Medina-Jawad] for Metricom (Applicant), PG&E (Owner) - Request to Attach a Telecommunication Antenna Facility to a PG&E Transmission Tower.

The property is located at 1620 Highland Boulevard, northerly side at the point just before the street closure and barricade structure accessed from Mission Boulevard in a A (Agricultural) District.

RECOMMENDATION

It is recommended that the Planning Commission find that the project is exempt from environmental review, and approve the project subject to the attached findings and conditions.

DISCUSSION

Area and Land Description

The area along Highland Boulevard is developed with single-family homes. Highland Boulevard is a narrow street and while passing from Mission Boulevard to Campus Road and beyond to University Court, it is barricaded just beyond the location of the tower to prevent through traffic to the State University. Highland Boulevard residences located on the easterly side of the barricade have their access from Campus Drive.

The PG&E transmission tower on which the antenna is to be mounted is within property owned by the utility company and is undeveloped except for the tower. The transmission corridor is approximately 200 feet wide with the tower being located 30 feet from the street and to within approximately 65 feet of the residence along the west property line. The closest home east of the transmission tower is approximately 150 feet away. The tower is generally located at the crest of the hill, and therefore, the structure is highly visible to an extended area beyond the immediate neighborhood. The base of the tower is 30 feet square. The property is only partially enclosed by a 6-foot-high chain-link fabric and solid wood board fence that is located between property and the adjacent residence along the westerly property line and where abutting the residence to the far easterly side. The balance of the property appears to be unfenced where the land drops off into the heavy underbrush and trees of the canyon to the north.

Proposed Development by Applicant

Metricom proposes the installation of a telecommunication antenna facility to be attached to a PG&E transmission tower. The antennas are to be mounted near the top of the tower above the power lines. The overall height of the tower is 79 feet-6 inches. Four sectors of panel antennas (for a total of eight antennas), each measuring 3 feet in height, are to be mounted at the corners of the tower. The antenna panels and support structures will be painted to match the tower. In staffs opinion, most individuals will not readily discern the difference between a standard PG&E transmission tower and one with the proposed antenna mounted thereon.

In conjunction with the antenna array is the need for equipment storage on the property. A concrete pad (10 feet by 10 feet) will be placed under the center of the tower to mount 3 steel cabinets (4 feet-10 inches long by 2 feet-8 inches wide) each that house the radio equipment and power supplies. The cabinets will be approximately 4 feet high. The pre-manufactured equipment cabinets are self-contained and can be painted to lessen their presence. An 8-foot-high wood-slatted fence will enclose the cabinet area.

After construction is complete, the site will be visited once a month for routine maintenance purposes. Each Metricom facility is monitored 24 hours/day, electronically, for intrusion and environmental disruption. The facility will also contain a small sign identifying an "800" number to call in case of an emergency. The "800" number is manned 24 hours/day by Metricom employees. The sign also identifies the site as a Metricom facility and complies fully with all FCC regulations regarding signage at the facility.

Metricom, Inc. is a provider of mobile data networking and technology. Metricom's wireless technology operates under the name Ricochet®. Ricochet is a network that enables high speed, wide area access to on-line services, the Internet. LAN applications: and peer devices. The wireless mobile information access service allows people to work outside the confines of their office and operates from anywhere in coverage areas without being bound to wall jacks.

In regards to television/radio interference, Metricom's mobile data networking and technology system is an extremely low-power facility, employing only a small fraction of the power used by television and radio broadcasters. Metricom is licensed by the FCC to operate specifically within a certain band frequency thereby eliminating any potential interference with radio or television transmission reception in the area.

This application may be acted on by staff. However, because of concerns expressed by area residents from the initial referral, the Planning Director is referring the application to the Planning Commission in order to hear public testimony before taking action on the proposal. The proposed facility follows the intent of the Antenna and Telecommunications Facilities Ordinance of the City within residential areas by placing the antenna on an existing structure to reduce its visual impact.

Environmental Review

The proposed antenna and equipment cabinets produce no noise, smoke, odors or refuse. They do not present a safety hazard, and create minimal vehicular traffic (typically one vehicle per

month.) Operation of the facility will not conflict with other uses in the area, and construction will result in minimal disturbance to the surrounding area. The system developed by Metricom is an extremely low-power use, employing only a small fraction of the power used by television and radio broadcasters. Metricom is licensed by the FCC to operate specifically within the 902-928 Megahertz frequency band thereby eliminating any potential interference with radio or television transmission reception in the area.

The Metricom facility meets all state and federal regulations for emission of non-ionized radiation emissions. All antenna facilities (including radio and television broadcasting, microwave and cellular communications, ham radios, police radar) emit a small amount of non-ionizing radio frequency radiation ("RFR"). This form of microwave energy is low in power and cannot ionize, or alter, the molecular structure of living tissue. The federal government (FCC) has legislated that they will be solely responsible for the health aspect of all licenses that they issue and that state or local governments cannot deny a permit based on health issues. The only review powers that have been given to local government, is their review of the placement, design, and construction of these facilities.

The proposed Metricom facility will result in no significant impact to the environment or to the area in which it is located. Staff believes that the project should be considered exempt under the California Environmental Quality Control Act (CEQA) under Section 15303, Class 3, New Construction or Conversion of Small Structures or Section 15332 Class 32 (In-fill Development Projects). Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures.

Public Notice

On October 6, 2000, a Notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Notice was also provided to the Mission-Foothills Neighborhood Task Force members. An earlier mailed notice provided an opportunity for persons to comment on the project at the early stages of the submittal. Staff has received comments from several residents in the neighborhood who have expressed concern regarding health risks of living with the overhead transmission lines, the extreme eye sore the facility would create and potential fire danger if a natural disaster or accident happens. One household believes that the City should adopt an underground-only wire policy (see attached email message).

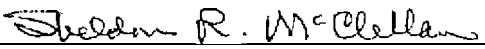
On October 10, 2000, a Neighborhood Informational Meeting was held to provide interested parties an opportunity to meet the applicant, to review plans of the telecommunication facility, and to ask questions and obtain answers to their specific concerns. In attendance at the meeting were the applicant and three company engineers and a City staff member. No interested neighbors or public attended the meeting.

CONCLUSION


Staff recommends approval of the use permit to allow the telecommunications facility and believes it to be consistent with the adopted Antenna and Telecommunications Facilities Ordinance. Staff believes that the proposed antenna being co-located on an existing tower provides a beneficial

service to the community without the need to erect a separate tower or support structure. While the existing transmission tower is not deemed attractive, the installation of the facility on the tower will not be that noticeable or have a significant negative visual impact to the neighborhood or surrounding area.

Prepared by :


Sheldon R. McClellan
Senior Planner

Recommended by :


Dyana Anderly, AICP
Planning Manager

Attachments:

- A Area Map
- B Findings for Approval
- C Conditions of Approval
- D Email from Jahanghirs
Development Plans & Photo Simulation

FINDINGS FOR APPROVAL

Administrative Use Permit No. 00-150-28
Whalen & Company for Metricom (Applicant)
PG&E (Owner)

1620 Highland Boulevard

Request to construct and operate a telecommunications facility from property developed with a PG&E transmission tower.

- A. That approval of Administrative Use Permit No. 00-150-28, as conditioned, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgement and is exempt from CEQA review because of the small size of the proposed telecommunications facility; and.
- B. That the proposed telecommunications facility will not impair the character and integrity of the Agricultural District on which the antenna is to be placed or the adjacent Single-Family Residential District or surrounding area in that the PG&E transmission tower is existing and that no new pole or support tower is needed to anchor the antennas. Furthermore, the number of telecommunications facilities in the area can be limited by ordinance (Article 13 of Chapter 10 of the Hayward Municipal Code) which spaces such towers out for visual purposes, and
- c. The proposed antenna facility will not be detrimental to the public health, safety or general welfare in that the telecommunication antennas will be conditionally approved to properly regulate the operating procedures and activities associated with the use, and
- D. That the proposed use is permitted subject to an use permit approval and that the use as proposed is consistent with the General Plan and applicable City regulations adopted under the City of Hayward Municipal Code (Article 13 of Chapter 10/Antenna and Telecommunications Facilities Ordinance), and
- E. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA). The project is categorically exempt under Section 15303 (New Construction or Conversion of Small Structures) or 15332 (In-Fill Development Projects), Class 32.

CONDITIONS OF APPROVAL

Administrative Use Permit No. 00-150-28
Whalen & Company for Metricom (Applicant)
PG&E (Owner)

1620 Highland Boulevard

Request to construct and operate a telecommunications facility from property developed with a PG&E transmission tower.

1. The proposed application (Administrative Use Permit Application No. 00-150-28) to install a wireless data transfer cabinet and related antennas to be mounted on an existing PG&E transmission tower, shall operate according to these conditions of approval and the plans approved by the Planning Commission on October 19, 2000, labeled Exhibit "A." This approval is void one year after the effective date of approval unless a building permit application has been submitted and accepted for processing by the Building Official. Any modification to this permit shall require review and approval by the Planning Director.
2. Prior to final inspection all pertinent conditions of approval and all improvements shall be completed to the satisfaction of the Planning Director.
3. Applicant shall apply for all necessary building permits from the Building Division. All structures and antenna improvements shall be in accordance with the Uniform Building Code, Uniform Mechanical and Plumbing Code, National Electrical Code, and the Uniform Fire Code as adopted by the City of Hayward.
4. All facility equipment other than antennas shall be contained entirely within the equipment cabinets. No storage of materials, equipment or supplies shall be permitted outside of the cabinets.
5. The support members for the antennas shall be painted a neutral background color (light non-reflective gray or other approved color) that best matches the P.G.&E. transmission tower structure. The color shall be approved by the Planning Director prior to the issuance of a building permit.
6. The equipment cabinets, to be located under the base of the transmission tower, shall be painted a flat, dark green or other color approved by the Planning Director.
7. Prior to issuance of a building permit, the applicant shall provide a letter of credit, bond, or other instrument which the City Engineer deems sufficient to secure 150 percent of the estimated cost of removing the applicant's antenna and other telecommunications facilities

and restoring the site to its condition before installation of such facility when such antenna or other facility is relocated, terminated, or abandoned.

8. Unless a new permit is issued within 180 days thereafter, all improvements installed including their foundation shall be removed from the property and the site restored to its natural pre-construction state within 180 days of permit expiration? revocation or abandonment.
9. The applicant shall provide notification to the Planning Director upon cessation of operations, or expiration of its permit, subject to the determination of Planning Director that the use of the site has ceased for a period of six months. Should the owner fail to effect such removal, the property owner shall be responsible for the removal of the equipment.
10. Any future replacement or reinstallation of structures or equipment at this telecommunication facility shall be subject to the requirements and standards of the City of Hayward at that time.
11. If determined to be necessary for the protection of the public peace, safety and general welfare, the City of Hayward may impose additional conditions or restrictions on this permit.
12. The transmission tower shall provide sufficient anti-climbing and security measures into the facility as needed to reduce potential for unauthorized access, vandalism, or injury. The design of any fencing and/or security system shall be approved by the Planning Director prior to issuance of a building permit.
13. The applicant shall provide signage on the equipment shelter, including phone numbers of emergency contact persons, in case of an emergency for the facility.
14. The applicant shall be responsible for graffiti-free maintenance of the telecommunications facilities, and shall remove any graffiti within seven days of occurrence of City notification.
15. Noise levels from the operation of internal fans or other related cabinet equipment shall not exceed 65 dba or the background noise level originating from Highland Boulevard. If it comes to the attention of the Planning Director that there are problems occurring as a result of the shelter fans or other related noise, the Director may bring this use permit application to the Planning Commission for consideration of imposing additional conditions or restrictions or for revocation.
16. Violation of these conditions or requirements may result in the City of Hayward instituting a revocation hearing before the Planning Commission.

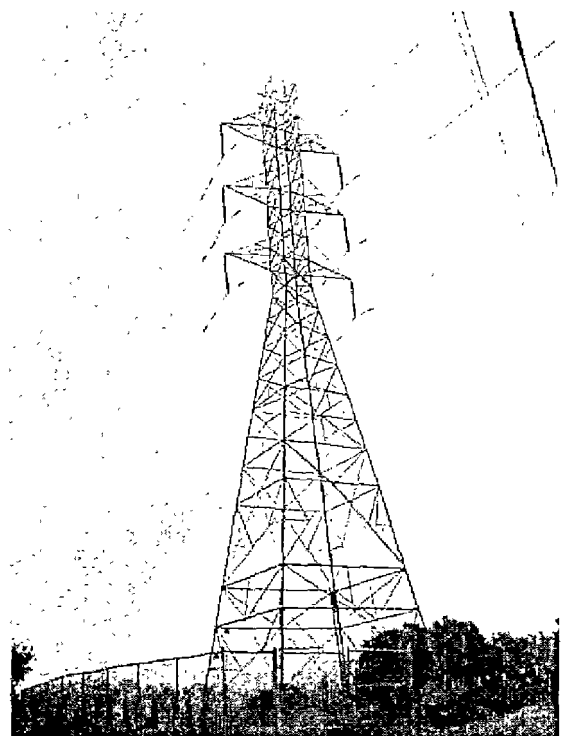
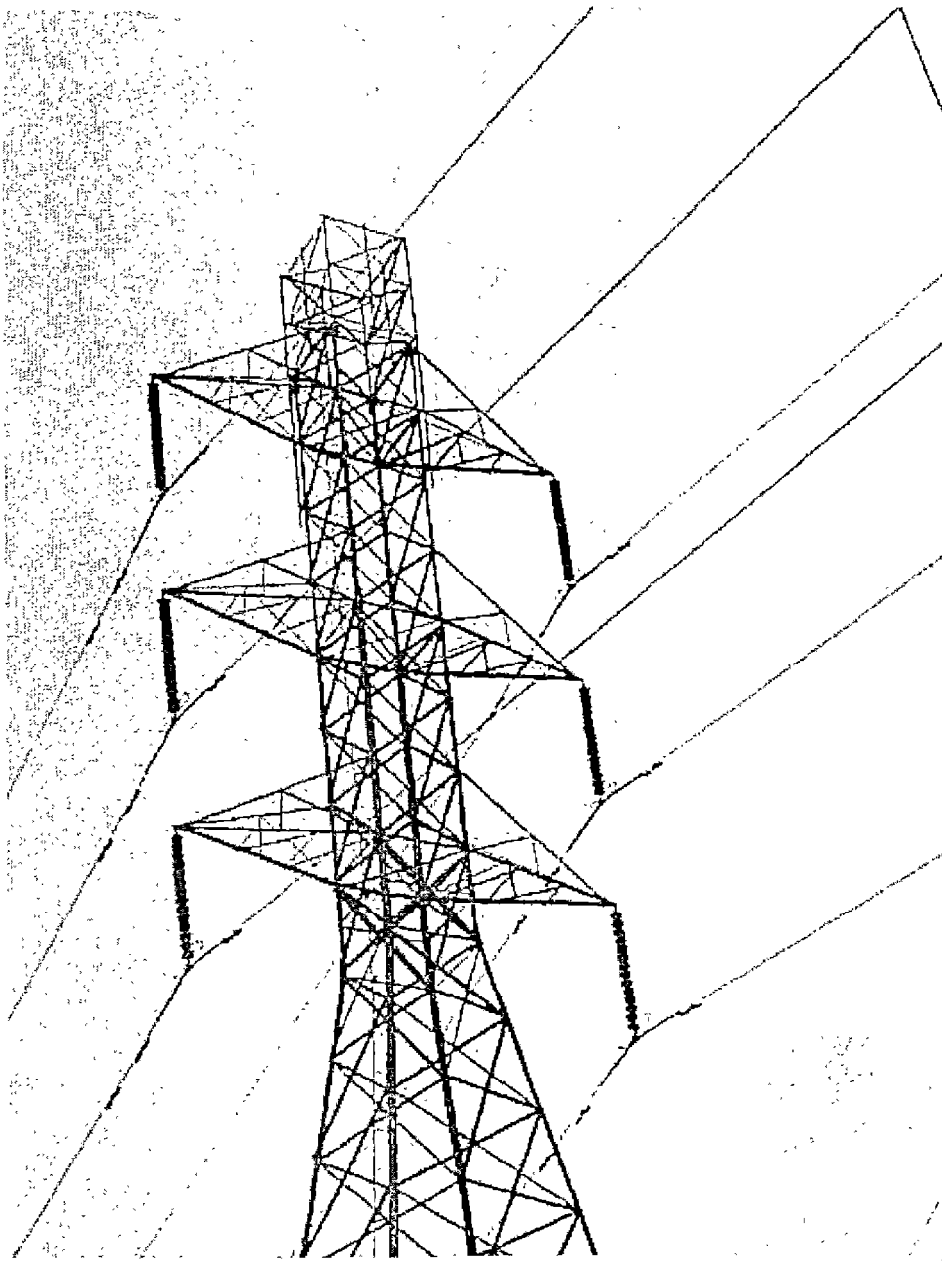
Calling Form:- City of Hayward Website Guest Book
Addressee: Dyanna Anderly
User Name: Yasmin, Musa, Hyaan & Rehaan Jahanghir
Telephone: (510)881-0617
US Mail: 1620 Highland Blvd. Hayward, CA 94542 .
Comments: Dear Ms. Anderly

I have been a resident of Hayward for 16 years, and have lived in the Hayward Hills for the past 6 years. We believe the beauty of the Hayward Hills is rare in the Bay Area and it should be preserved. This is why we moved here from the over populated Sunnyvale, where we are both Engineers. We are strongly opposing the proposed telecommunications antenna, because we have too many health risks by having all these wires over head also it is a extreme eye sore and fuel if a natural disaster or accident happens involving a fire. I believe Hayward should adopt an underground only tire policy like many other cities have done. My neighbor who is also my brother and a doctor and his wife who is a attorney

(1624)has done much research and all the findings are very unclear and only time will tell what all the effects of all this radiation will have on our bodies and we don't want to be the experimental animals.

Thank you

The Jahanghirs



Due to the size, type or quality of the attachments, they are not scanable and therefore are not available for website viewing. The report, in its entirety, is available in the City Clerk's Office, Planning Division, and at the Main Library.

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO.

11/28/00
me

Introduced by Council Member _____

RESOLUTION DENYING APPEAL OF PLANNING
COMMISSION'S DECISION TO APPROVE
ADMINISTRATIVE USE PERMIT APPLICATION NO. 00-
150-28 – WHALEN & COMPANY FOR METRICOM
(APPLICANT) and PG&E (OWNER)

WHEREAS, Administrative Use Permit Application No. 00-150-28 involves a request to attach a telecommunication facility to an existing PG&E transmission tower on property located near 1620 Highland Boulevard in an Agricultural ("A") District, adjacent to a Single Family Residential ("RS") District; and

WHEREAS, on October 19, 2000, the Planning Commission held a public hearing on Administrative Use Permit Application No. 00-150-28 and approved the use permit, subject to certain findings and conditions of approval; and

WHEREAS, the project is categorically exempt from environmental review under the California Environmental Quality Act; and

WHEREAS, on October 26, 2000, Appellants, Lubna and Ikram Jahangiri, appealed the Planning Commission's approval of Administrative Use Permit Application No. 00- 150-28; and

WHEREAS, the City Council has reviewed and considered all the material presented, including the record of the proceedings before the Planning Commission. at a public hearing held on December 12, 2000, and sustained the action of the Planning Commission, based on the evidence submitted at such hearing; and

WHEREAS, the City Council hereby finds and determines that:

1. The approval of Administrative Use Permit No. 00-150-28, as conditioned, will have no significant impact on the environment, cumulative or otherwise, and the project reflects the City's independent judgment and is exempt from environmental review under California Environmental Quality Act ("CEQA") as new construction of small structures or in-fill development.
2. The proposed telecommunications facility will not impair the character and integrity of the Agricultural District on which the antenna is to be placed or the adjacent Single Family Residential District or surrounding area in that the

PG&E transmission tower is already existing and that no new pole or support tower is needed to anchor the antennas. Locating the antennas on the existing transmission tower eliminates the need to erect a separate tower or support structure. The antennas are small (1' x 3') and will be painted the same color as the tower, as will the equipment cabinets, to minimize visual effect. The fence surrounding the equipment cabinets will be constructed of wood to deter vandalism. Records of the Hayward Police Department for the last two years do not indicate any calls for service for vandalism in the area. Operation of the facility will not conflict with other uses in the area. Furthermore, the number of telecommunication facilities in the area can be limited by ordinance (Article 13 of Chapter 10 of the Hayward Municipal Code) which permits spacing towers for visual purposes. Metricom service calls to the facility are anticipated to occur once per month, causing no perceptible increase in traffic in the area.

3. The proposed antenna facility will not be detrimental to the public health, safety or general welfare in that the telecommunications antennas will be conditionally approved to properly regulate the operating procedures and activities associated with the use. The Metricom facility meets all state and federal regulations for emission of non-ionized radiation. The frequency band on which Metricom is licensed to operate will not cause any interference with radio or television transmission in the area. Federal law prohibits local regulation of telecommunications facilities based on health issues.
4. The proposed use is consistent with the General Plan and applicable City regulations adopted under the City of Hayward Municipal Code (Article 13 of Chapter 10/Antenna and Telecommunications Facilities Ordinance).

NOW THEREFORE BE IT RESOLVED, upon the basis of the aforementioned findings, the City Council hereby denies the appeal, and approves Administrative Use Permit No. 00-150-28, subject to the attached Conditions of Approval.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2000

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES :

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward